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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,777	01/18/2005	Andrew Robert Lehane	871-012099-US (PAR)	7052
22878 7590 10/31/2007 AGILENT TECHNOLOGIES INC. INTELLECTUAL PROPERTY ADMINISTRATION, LEGAL DEPT. MS BLDG. E P.O. BOX 7599 LOVELAND, CO 80537			EXAMINER HSU, ALPUS	
			ART UNIT	PAPER NUMBER
			2619	
			NOTIFICATION DATE	DELIVERY MODE
			10/31/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary

Application No.

10/521,777

Applicant(s)

LEHANE ET AL.

Examiner

Alpus H. Hsu

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,12-17,19 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,12-17,19 and 23-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/18/05, 1/13/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2619

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. Claims 1-6, 8, 12-17, 19, 23-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7, claim 12, line 7, each term of "the selected packets" lacks antecedent basis.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by NEWHALL et al. in U.S. Patent No. 5,682,479 A, hereinafter referred to as NEWHALL.

Referring to claims 1 and 12, NEWHALL discloses a method and an apparatus for identifying a network-wide set of paths potentially taken by packets in a communications network, by: collecting packets containing information indicative of the interconnection of the network, and of its interconnection with other networks; detecting the contents of the collected packets; using the detected contents to identify the network-wide set of routers and sub-networks

Art Unit: 2619

and their interconnections, that are traversed by communications within the network; and providing an output indicative of any selected part of the network-wide set of routers and sub-networks and their interconnections (see col. 1, line 54 to col. 2, line 36, col. 11, lines 7-48, col. 12, line 55 to col. 13, line 7, col. 13, line 20 to col. 14, line 8).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2-6, 8, 13-17, 19, 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over NEWHALL in view of RICCIULLI in U.S. Patent No. 6,473,405 B2, hereinafter referred to as RICCIULLI.

Referring to claims 2-4, 6, 13-15 and 17, NEWHALL differs from the claims, in that, it does not disclose the feature of using the detected contents to determine functionality and cost metrics for the default paths and alternate paths, which is well known in the art and commonly adopted in network routing field for optimal path/route selection.

RICCIULLI, for example, from the similar field of endeavor, teaches the utilization of functionality and cost metrics determination for the default paths and alternate paths (see col. 2, lines 38-58), which can be easily adopted by one of ordinary skill in the art to implement into the method or apparatus in NEWHALL, to provide least cost and optimum path/route selection to further improve the system efficiency and cost reduction.

Referring to claims 5, 8, 16, 19, 23-30, NEWHALL also differs from the claims, in that, it does not disclose the features of querying the routers for properties associated with the determined paths based upon their predetermined functionality, and determining alternate path by comparing the determined paths, which are also well known in the art and commonly adopted in network routing field for alternate routing.

RICCIULLI, from the similar field of endeavor, also teaches the features of querying the routers for properties associated with the determined paths based upon their predetermined functionality, and determining alternate path by comparing the determined paths (see col. 5, line 1 to col. 6, line 8, col. 6, line 32 to col. 7, line 31), which can be easily adopted by one of ordinary skill in the art to implement into the method or apparatus in NEWHALL, to provide alternate routing for fault recovery to further improve the system reliability.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Callon '866, '347 & '899, Arrowood et al., Civanlar et al., Lin, Savage, Rajagopal et al., Canning et al., Choe et al., and Lemoff et al. are all cited to show the common feature of packets routing in network/subnetwork environment utilizing least cost routing scheme similar to the claimed invention.

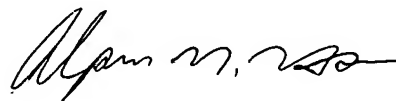
Art Unit: 2619

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571)272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHH



Alpus H. Hsu
Primary Examiner
Art Unit 2619